

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

MAURICE CRAWLEY,

Plaintiff,

vs.

17-CV-1389

CITY OF SYRACUSE, POLICE OFFICER VALLON SMITH,
in his individual capacity; CHIEF FRANK FOWLER,
in his individual capacity; DOES 1-20,

Defendants.

Transcript of a Civil Motion held on July 31, 2019,
before the HONORABLE DAVID N. HURD, at the United States
Federal Courthouse, 10 Broad Street, Utica, New York, before
Nancy L. Freddoso, Registered Professional Reporter and Notary
Public in and for the State of New York.

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Motion

1 COURT CLERK: Maurice Crawley versus the City of
2 Syracuse, Police Officer Vallon Smith and Chief Frank Fowler,
3 et al., 2017-CV-1389.

4 Attorneys, please note their appearance for the
5 record.

6 MR. BONNER: Good morning, Your Honor.
7 Cabral Bonner appearing on behalf of plaintiff.

8 THE COURT: Good morning.

9 MR. POWERS: John Powers on behalf of Police Officer
10 Vallon Smith, Chief of Police Frank Fowler and the City of
11 Syracuse. Good morning, Judge.

12 THE COURT: Okay. Be seated.

13 Mr. Bonner, you came from California?

14 MR. BONNER: Yes, Your Honor.

15 THE COURT: I thought you had local counsel, so
16 that's why I scheduled oral argument. I didn't anticipate you
17 would be coming from California. I thought you would use your
18 local counsel. I think you had Mr. Ryder.

19 MR. BONNER: Yes, Your Honor. He was out of town
20 this week.

21 THE COURT: Is he still in the case?

22 MR. BONNER: Yes, Your Honor.

23 THE COURT: Okay. Well, I thought you would save
24 yourself a trip from California.

25 I want to state that I have reviewed all of the

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1 submissions, and I am inclined at this moment to render a
2 decision from the bench on the various issues, but I will
3 listen to counsel, and, as I have done in the past, if I find
4 maybe something I have overlooked or something should be
5 clarified, I would reserve decision, and then issue a written
6 decision.

7 So at this time, Mr. Powers, you may be heard with
8 regards to the motion on behalf of the defendants.

9 MR. POWERS: Thank you, Your Honor.

10 There is actually three different individual pieces
11 of relief that we are requesting. I would first start out with
12 the observation that I do believe that the issues are fairly
13 well delineated in both the sets of papers as far as the
14 issues.

15 And the first observation that I would make is that
16 we are not asking for complete dismissal of the action. We are
17 seeking dismissal of a portion of the action, certain claims,
18 based on what we submit is well settled law. First, the New
19 York State claims, we contend, are timed barred under General
20 Municipal Law 50-i and 8-115 of the City Charter which requires
21 those claims to have been brought within a year and ninety
22 days.

23 The argument in opposition is based on a case called
24 Covington, and the argument being presented is that at least
25 the false imprisonment claim, that's Claim Six, should be

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1 equitably tolled during the period of time that the criminal
2 proceedings were pending. That, of course, does not apply to
3 the assault claim. That assault claim accrues when the assault
4 occurs, that claim is time barred.

5 Covington, I believe it was decided in 1999 by the
6 Second Circuit. It was effectively overruled by Wallace v.
7 Kato. That is a Supreme Court case, Your Honor, that we have
8 cited. And there have been multiple district court cases in
9 the circuit that have recognized that Covington has been
10 overruled on the very basis that it was argued by the
11 plaintiffs here.

12 In fact, in Jones v. City of New York, plaintiff
13 made the exact same argument that plaintiff makes here, and
14 that was in 2016, a Southern District case. And the court held
15 that Covington -- stated, "Covington has been overruled by the
16 Supreme Court's decision in Wallace to the extent plaintiff
17 argues that his false arrest claims should have accrued at a
18 point later than when he was arraigned. His argument fails
19 under Wallace."

20 It is undisputed that plaintiff was arraigned on
21 July 29th of 2018. The action was brought in December of 20 --
22 or 2016. The action was brought in December of 2017. It is
23 time barred, Your Honor. So under that law, which we submit is
24 well settled, the state law claims should be dismissed.

25 In addition, we are seeking the dismissal of the

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1 individual 1983 claims for false arrest and false imprisonment.
2 That's Claim Three and Four. The basis is, again, what we
3 submit is well settled law. The presence of probable cause on
4 any claim arising out of the arrest immunizes the -- immunizes
5 the defendant from those claims, and that is because probable
6 cause is an element of the offense. It is an element that has
7 to be pleaded and proved. It can't be proven if it has been
8 found to exist in a criminal proceeding.

9 It appears as though plaintiff has acknowledged the
10 applicability of this law in their brief. They argue primarily
11 on an equitable basis that you should look at whether or not
12 the offense that the conviction was obtained on is related to
13 the charges that were originally brought. Your Honor, that is
14 an argument that has already been rejected by the Second
15 Circuit, and the two cases that I cite to you are Markavich
16 (phonetically) and the Jaegly. And in those cases, not only
17 does the conviction -- not only can the conviction be on a
18 claim that's not the one the plaintiff was arrested for, it
19 doesn't even need to relate to the charges that the plaintiff
20 was arrested for. It is the conviction of any crime. That's
21 what the actual Second Circuit statement of the rule is.

22 And so we would submit, Your Honor, again, Claim
23 Three and Four are well settled law. Those should be
24 dismissed. What is left in the case is excessive force, 1983,
25 against Vallon Smith and then the Monell claim also based on

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1 that alleged unconstitutional conduct against the city.

2 THE COURT: After viewing the video, I clearly
3 understand why you did not move to dismiss the excessive force
4 claim.

5 MR. POWERS: Well, I am not interested in wasting
6 anybody's time, least of all the Court's, Your Honor, and I
7 acknowledge that that claim has been pleaded as exists in the
8 pleading. I always say there is another side of the story that
9 you haven't seen yet, but that is for another day.

10 So based on our view of this case, the properly
11 dismissed claim should be dismissed. What's left is what
12 should be left, the excessive force and the Monell claim.

13 Now, we have also asked, Your Honor, that since
14 there are claims that are being dismissed, that in your
15 discretion you direct the plaintiffs to re-plead the complaint
16 and remove some of the surplusage and other material that we
17 would respectfully submit are not contemplated by Rule 8 or
18 Rule 10.

19 Now, I wouldn't have brought that motion if there
20 hadn't been claims to be dismissed. I realize that sometimes
21 you just let these deviations from the rules remain
22 undisturbed, but since we are at this procedural point, I think
23 it makes sense to have a properly pleaded complaint that is
24 limited to factual averments.

25 THE COURT: You didn't have any problems making the

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1 motion with the present complaint facts, did you?

2 MR. POWERS: No, I didn't, Your Honor.

3 THE COURT: Okay.

4 MR. POWERS: But that doesn't change the exercise
5 that I am going to have to go through to try to answer the
6 complaint as it is written, and the rules don't -- they don't
7 contemplate that situation, where I am denying or admitting the
8 holding of cases and, you know, the elements of a claim.
9 That's not what the pleading is for. So, you know, I
10 understand that's an area of discretion under 12(e). I would
11 submit that the complaint can be cleaned up, and this is an
12 opportunity to do it.

13 Your Honor, finally we have asked for bifurcation
14 which is in your discretion. We have cited some case law
15 that --

16 THE COURT: So that if we bifurcate it, we would
17 have to have two trials then, right?

18 MR. POWERS: Not necessarily, Your Honor. The case
19 law looks at two issues overarching issues. One is the issue
20 of prejudice, and one is the issue of efficiency, whether or
21 not we are going to do two trials or one trial.

22 Plaintiff has made the observation that our position
23 is self-serving on efficiency because the Monell claim only
24 goes away if the defendant win on the underlying claim. And I
25 would submit to you that's not the only time the Monell claim

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1 goes away. It's not the only circumstance. In fact, under the
2 majority of the circumstances in this case, the Monell claim
3 phase never occurs. If plaintiff is successful on their claim,
4 in other words, there is a judgment on amount of damages for
5 the constitutional injury from the excessive force, that is an
6 enforceable judgment against the individual defendant which the
7 city is obligated to indemnify him on.

8 And so once that judgment is paid by the city, the
9 Monell claim goes away as well. So if the claim is as strong
10 as the plaintiffs contend it is, as they seem to contend it is,
11 then they should have no problem of bifurcation. In fact, from
12 efficiency standpoint, an excessive force claim is very
13 straightforward. It is the facts and circumstances that were
14 known at the time within the four corners of that incident,
15 limited amount of depositions. We could really try the
16 individual claim, without the albatross of the Monell claim, we
17 could try that by the end of the year.

18 There is only one limited circumstance where we get
19 to phase two, and, in fairness, I should mention this. If the
20 plaintiff prevails on the individual claim, but the jury finds
21 that the defendant is entitled to qualified immunity, then we
22 would have to go to phase two. Qualified immunity only
23 applies -- only immunizes the individual state actor. It
24 doesn't immunize the city. Then we would have to go to phase
25 two, do the Monell discovery, do the Monell case.

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1 In that instance, I would submit, I would agree that
2 it would be insufficient. But the other issue to consider
3 there is this issue of prejudice, Judge. The case law has
4 recognized this. You have got an individual defendant whose
5 liability rises or falls on a certain set of circumstances in a
6 certain incident. When you get in a case where there is all
7 sorts of evidence being put on, you and I both have experience
8 of this, of other incidents involving other police officers,
9 that influences the jury's perception of the individual's
10 claim. There is a prejudice there.

11 Now, maybe you can address it through instructions,
12 cautionary instructions, jury instructions, those sorts of
13 things, but the case law recognizes the prejudice there, and
14 that is something to be taken into account.

15 THE COURT: Why don't we wait until after discovery
16 to see where we are going on that rather than right here at the
17 initial. We haven't even submitted an answer yet. All right.
18 Thank you, Mr. Powers.

19 Mr. Bonner, you may be heard.

20 MR. BONNER: Thank you, Your Honor.

21 Regarding the first issue which is the state claims,
22 I wish I had a better argument for you than equitable tolling,
23 but we do not. If -- there was some delay in taking the 50-h
24 hearing which caused us to delay, but beyond equitable tolling,
25 unfortunately there is really nothing I can argue on that

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1 point.

2 THE COURT: What I can't understand at the moment is
3 why your client ended up pleading guilty to something in this
4 case.

5 MR. BONNER: So I would like to --

6 THE COURT: That's to be seen.

7 MR. BONNER: And that leads me to the second point
8 which is the issue of the false arrest and false imprisonment.
9 I believe that we attached as Exhibit B the transcript from the
10 hearing before Judge McMahon. And if you read that, what the
11 judge says is, the court finds that over a period of April
12 through July 2016, defendant repeatedly showed up at various
13 criminal and traffic stops where Officer Smith was and
14 proceeded to verbally accost the officer by yelling and
15 claiming a tornado is coming.

16 So if you've watched the video of this incident, he
17 didn't do any of that. The conviction was based on conduct
18 that occurred prior to the conduct at issue. The conviction
19 was for apparently other instances where Mr. Crawley showed up
20 to videotape various traffic stops. If you watch the video in
21 this case, the contact between Mr. Crawley and the officer was
22 initiated by the officer. Mr. Crawley had said nothing and
23 done nothing to the officer prior to that.

24 THE COURT: So he shouldn't have pled guilty to
25 anything?

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1 MR. BONNER: I don't believe he should have.

2 THE COURT: But he did.

3 MR. BONNER: Well, he actually didn't plead guilty.

4 I know that it says that, but if you read the attachment, he
5 was found guilty. I don't quite know why the attachment to the
6 defendant's papers included a guilty plea, but he was found
7 guilty.

8 MR. POWERS: Yes, he didn't -- there was an actual
9 trial, Your Honor. He was found guilty. There was an
10 evidentiary -- there was a trial. He was actually found guilty
11 of harassment second.

12 MR. BONNER: But the harassment second degree, the
13 factual basis for that finding did not occur on the date in
14 question. In other words, what he was doing at the time the
15 officer made the decision to arrest him, which if you watch the
16 video, the officer makes the decision to arrest him when he
17 says I can't hear you. The officer then stops what he is
18 doing, walks across the street, and initiates the arrest.

19 If you look at what he is convicted of in Exhibit B
20 to our submittal, it has to do with yelling and calling him an
21 Uncle Tom and doing things that did not occur on the date he
22 was arrested. So while I can't argue on the case law, I think
23 as a factual matter, this is distinct.

24 This is an officer who is initiating arrest based on
25 conduct that included solely saying to the officer I did not

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1 hear you. Officer makes the decision at that point to arrest.
2 He walks over. He says, you are under arrest, turn around, you
3 are under arrest. So even if the harassment argument was made
4 that he was -- he was in fact convicted on that, it seems like
5 the factual basis for that would still have to be present at
6 the time of the arrest for there to be probable cause.

7 If you watch the video, it is undeniable that there
8 is no probable cause for the underlying claims that he was --
9 that the officer --

10 THE COURT: What exactly was he convicted of? I
11 mean --

12 MR. BONNER: He was convicted of harassment in the
13 second degree.

14 THE COURT: Wasn't that as a result of the incident
15 that's on the video?

16 MR. BONNER: No, Your Honor. So if you -- what I
17 was reading earlier is for the judge's opinion. The judge --
18 it is what the judge ordered, John McMahon what he ordered
19 following the trial. Judge McMahon, following the trial on
20 June 27, 2017, what the court finds is: The court finds that
21 over the period of April through July 2016 -- so he is talking
22 about incidents that occurred prior to the incident in
23 question -- the defendant repeatedly showed up at various
24 criminal and traffic stops where Officer Smith was and
25 proceeded to verbally accost the officer.

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1 So that's what he was convicted of. But that didn't
2 occur on this occasion. If you watch the video, he did not
3 verbally accost the officer. He sat -- he made some comments
4 to himself. But the officer didn't hear those comments. The
5 officer initiated contact with Mr. Crawley by saying if you say
6 anything, you are going to jail. So in essence, what he was
7 convicted of was prior conduct, not the conduct that occurred
8 on the specific day where he was arrested by the officer.

9 THE COURT: What was he charged with as a result of
10 the incident? And what happened to that charge?

11 MR. BONNER: Those charges got dismissed. He was
12 charged with obstructing a government administration in the
13 second degree which is -- this is what the complaining officer
14 said that he did. He says: On the aforementioned date, time,
15 and location above, defendant Maurice Crawley did commit the
16 crime of obstruction of a governmental administration in the
17 second degree. The defendant did so when he intentionally
18 attempted to prevent from a public service from performing an
19 official function.

20 THE COURT: And what happened to that charge?

21 MR. BONNER: Dismissed.

22 THE COURT: By who?

23 MR. BONNER: By Judge McMahon, I presume by
24 Judge McMahon, who is the judge, the trial judge.

25 THE COURT: So it never went to trial? Or did it go

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1 to trial and he dismissed it?

2 MR. BONNER: I don't exactly know that, Your Honor,
3 but I do know it was dismissed.

4 THE COURT: Mr. Powers, can you enlighten me on
5 that? The charges that occurred as a result of what the
6 litigation is here, what happened to them and were they
7 dismissed?

8 MR. POWERS: If you look at --

9 THE COURT: And if they were, why would your motion
10 to dismiss the false arrest be granted if we are talking about
11 a conviction of incidents that occurred prior when he was
12 filming people?

13 MR. POWERS: Well, I would say -- I have a few
14 responses to that, Your Honor. If you look at the certificate
15 of conviction, it has the charge convicted, and the two charges
16 that the plaintiff was arrested for. The certificate of
17 conviction has the arrest date, July 28, 2016. This is the
18 conviction that arose out of that arrest.

19 Now, it is not the same as the charges that he was
20 arrested for, but that's not required under the law. To the
21 extent that counsel is representing to you that the July 28th
22 incident was not within the incidents that Judge McMahon
23 described between April and July of 2016, I disagree. The
24 first fifty-one pages of this transcript were not provided to
25 you --

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1 THE COURT: Right.

2 MR. POWERS: -- by the plaintiff. I have some
3 knowledge of the issues and the evidence that came in that was
4 tried. The incident that appears on the video is the
5 culmination of a series of incidents where this individual
6 showed up during these arrests.

7 THE COURT: What did he dismiss?

8 MR. POWERS: The OGA and the resisting arrest.

9 THE COURT: As a result of the incident of
10 July 28th, right?

11 MR. POWERS: My understanding, and I don't know the
12 answer to this, but my understanding is that those were
13 dismissed by a prosecution, and then they proceeded with the
14 harassment second, but I don't know that for sure.

15 THE COURT: So how can I make a decision at this
16 time under these circumstances that you are requesting?

17 MR. POWERS: Because I have provided you the
18 certificate of conviction which establishes that this
19 conviction arose out of that arrest, and the case law holds
20 that you don't have to be convicted of the charges that you are
21 arrested for.

22 THE COURT: Yes, I understand that. I understand
23 that. But if you are arrested for something that occurred on
24 July 28th, and you plead guilty to something other than that,
25 that's not related to that arrest -- or not arrested to what

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1 you were arrested for, you mean to say that if he pled guilty
2 to something like some incidents, say, with his girlfriend,
3 that had nothing to do with this, that he would still be barred
4 from bringing a false arrest claim here if the charges that he
5 was arrested for were dismissed?

6 MR. POWERS: I would not, but that's not the
7 situation, Your Honor.

8 THE COURT: I know it isn't, but isn't that what we
9 are actually talking about? He was convicted of prior
10 incidents.

11 MR. POWERS: That is not what we are talking about.

12 THE COURT: Isn't that what the law says that
13 because this is a cumulation of something, and that that's
14 the -- he is convicted of activity prior -- I mean, what was he
15 actually arrested for on July 27th, 28th, and what was he
16 convicted of? Or were they the same-- were they part of that
17 arrest, and if so, why?

18 MR. POWERS: Well, as indicated by the certificate
19 of conviction, they were, Your Honor, and the language that
20 counsel read you, that he just read you from Judge McMahon,
21 states: The court finds then for the period of April through
22 July of 2016. This incident occurred on July 28, 2016. To say
23 that that language supports a finding that this particular
24 incident wasn't part and parcel of the conduct that the
25 plaintiff was convicted of, is not only inconsistent with the

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1 transcript that we don't have, it is inconsistent with the
2 three pages that plaintiff has submitted.

3 But you don't need this transcript because you have
4 a certificate of conviction. You know that that conviction
5 arose out of the arrest because it has the arrest date on it
6 that's certified by the court. You are entitled to rely on
7 that. There is case law that says that you are entitled to
8 rely on the certificates of conviction in Rule 12 scenarios.

9 THE COURT: Okay. Thank you.

10 Mr. Bonner, if he pleads guilty or is convicted of
11 something that is part of the arrest, why isn't that sufficient
12 to bar his claim? It was all part of the same matter. And how
13 can he claim false arrest when he plead guilty to something
14 that was part of that arrest?

15 MR. BONNER: Because it was not part of that arrest
16 on this occasion. If you've watched the video, he didn't do
17 any of the things --

18 THE COURT: Well, that's a question -- that was
19 why -- he was maybe acquitted of that because of what was on
20 the video, but he was arrested because of all the other things
21 he did over the period. That was part of it, wasn't it?

22 MR. BONNER: No, I do not believe so, Your Honor,
23 and this is why. If you start with the proposition that a
24 citizen of the United States has the right to stand and
25 videotape a police officer who is conducting an arrest --

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1 THE COURT: Be seated, Mr. Powers.

2 MR. BONNER: If you start with that on the First
3 Amendment, if you start with that proposition, then assuming
4 there had been prior incidents where he yelled at this officer
5 and harassed this officer, he then probably was warned. Don't
6 do that anymore. So on this occasion, he is not doing it. He
7 is engaging in completely lawful conduct.

8 He is observing. He is not yelling at the officer.
9 He is not doing anything to harass the officer. He is simply
10 taking the video. The officer then escalates the situation by
11 initiating a contact with Mr. Crawley by saying, if you do
12 anything, I am going to arrest you. He hasn't done anything at
13 that point.

14 Then the officer makes the decision to arrest when
15 Mr. Crawley engaged, just simply asked the question, what did
16 you say, I didn't hear you? So the question for false arrest
17 is whether there was probable cause at the time the officer
18 made the decision to arrest.

19 Now, the officer may have been making a decision
20 based on this history, based on the fact that in prior
21 occasions, this guy has harassed me, and that may have been
22 what he subjectively was thinking, but that's not the question
23 for probable cause. The question is would -- objectively at
24 the time he makes the decision to arrest, had there been
25 conduct that would give a reasonable officer probable cause

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1 that a crime had been committed.

2 And we have the video. We know on this occasion
3 that didn't happen. So if the officer was basing the arrest on
4 prior conduct, and if the conviction was based on prior
5 conduct, I think there is still a live factual question as to
6 whether or not at the time he made the arrest, he had probable
7 cause.

8 THE COURT: Well, why if he had pled guilty, it
9 would be clear to resolve all issues, that would bar any false
10 arrest claim. Where is it different because he was convicted
11 as opposed to pleading guilty? How would -- why would that be
12 different?

13 MR. BONNER: I think it is different, Your Honor,
14 because the judge found facts unrelated to this particular
15 incident that supported the guilty verdict. And we know that
16 he found those facts because if you have watched the video, and
17 you look at what the judge says he finds, Mr. Crawley did not
18 do any of the things mentioned in the judge's findings on the
19 video.

20 And this is a different situation than maybe other
21 cases because we know exactly what Mr. Crawley did before the
22 cop made the decision to arrest, and I have the video if you --
23 it sounds like you have already seen it before.

24 THE COURT: I have viewed the video.

25 MR. BONNER: And if you view the video, what I was

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1 ask Your Honor to do, if you view the video, and you look at
2 the court's findings, you will see that none of the things that
3 the court found, happened on the day of the arrest.

4 So, yes, the arrest put Mr. Crawley into the system,
5 and yes, there were charges that the officer brought that were
6 dismissed, and yes, the district attorney decided, well, we are
7 going to go ahead with a prosecution likely because of the
8 police officer wanting to have a conviction. So those things
9 did happen.

10 But I think it is a different type of scenario when
11 we can look exactly at the conduct that happened before the
12 arrest and compare it to what the judge found. And in that
13 context, the initial charging -- the initial charges that the
14 police officer brought are clearly not precedent. I mean,
15 there is no way that can -- you watched the whole arrest
16 happen. You watched the cop initiate the conduct. There is no
17 question that Mr. Crawley did not interrupt that or engage with
18 that.

19 THE COURT: I get your point. Anything further?

20 MR. BONNER: I would say that with respect to the
21 pleading, Your Honor, we do try to over plead because of issues
22 of Iqbal, and we just try to make sure we have everything in
23 there so that we are not prejudiced when it comes to these by
24 saying we didn't plead enough specificity.

25 And with respect to bifurcation, I do not believe it

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1 would aid or be more efficient to have bifurcation ordered,
2 especially for discovery. The additional discovery, I do not
3 think would be overly burdensome. I also think that there
4 is -- and I don't want to overstate this, but I believe that
5 Mr. Crawley, the reason he was engaging in videoing the scene
6 relates to a larger history with the Syracuse Police
7 Department, and I believe that is relevant, and I believe that
8 will come through with Monell.

9 And I also think, Your Honor, that we are civilized
10 attorneys and we bring these cases not just for our individual
11 plautus (phonetically) but in hopes that we can create a
12 broader change throughout society, throughout the community,
13 and having Syracuse as a defendant, having the Monell claims in
14 place, we believe are important to indicate the rights under
15 the constitution for all citizens. So we would want to see the
16 trial go forward as to Monell and discovery as to Monell, as
17 well as the individual defendants.

18 THE COURT: Thank you.

19 Thank you for your argument, Counselors.

20 I am going to reserve decision and issue a written
21 opinion.

22 Mr. McBrearty.

23 COURT CLERK: Court stands adjourned.

24

25

CERTIFICATE OF OFFICIAL REPORTER

1

2

I, NANCY L. FREDDOSO, RPR, Federal Official Court

3

Reporter, in and for the United States District Court for the

4

Northern District of New York, do hereby certify that pursuant

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